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May 13, 2010

Ruth Milkman, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: REQUEST FOR CONFIDENTIAL TREATMENT
Texas 10, LLC
WT Docket No. 10-78; File Nos. 0004139682 and 0004139683

Dear Ms. Harris:

The attached brochure — marked “Confidential - Not For Public Inspection” — is being submitted to the Commission on behalf of Texas 10, LLC (“Texas 10”), which is prosecuting the above-referenced applications for Commission consent to acquire two licenses currently held by Centennial Southeast License Company LLC and Centennial Communications Corp. (“Centennial”). In accordance with § 0.459(a) of the Commission’s Rules, Texas 10 respectfully requests that portions of the brochure be withheld from public inspection under Exemption 4 to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(b)(4). A redacted version of the brochure is also submitted for the public file.

The brochure was prepared by Texas 10 specifically for presentation to the Telecommunications and Media Enforcement Section of the Department of Justice’s Antitrust Division. It was designed to aid the Antitrust Division in its review of the proposed acquisition of the Centennial licenses under § 7 of the Clayton Act and § IV.H of the Final Judgment in *United States and State of Louisiana v. AT&T Inc. and Centennial Communications Corp.*, No. 1:09-cv-1932 (D.D.C. Feb. 10, 2010). The circumstances giving rise to the submission of the brochure to the Commission are as follows.

By letter dated February 23, 2010, Texas 10 provided information and documents to the Antitrust Division at the request of Ms. Hillary Burchuk. A request for confidential treatment accompanied the submission. Texas 10 obviously did not intend that the confidential material be disseminated to the Commission or the public.

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Ms. Burchuk asked Texas 10 to attend a meeting at her office on May 3, 2010. Texas 10 prepared the brochure to hand out at the meeting. It consisted of a PowerPoint presentation that summarized the information that would be relevant to the Antitrust Division's assessment of Texas 10's qualifications under § IV.H of the Final Judgment. Thus, the PowerPoint presentation was tailored to demonstrate that: (1) the divestiture assets that Texas 10 proposes to acquire in the three markets (Alexandria, LA MSA, Louisiana 3 - De Soto RSA and Mississippi 9 - Copiah RSA) will be used as part of a viable, ongoing wireless telecommunications business; (2) Texas 10 has the intent and the managerial, operational, technical and financial capability to compete effectively in the markets; and (3) AT&T will not be able to unreasonably raise Texas 10's costs, lower its efficiency, or otherwise interfere with its ability to compete effectively. Texas 10's showing was not intended to be reviewed under the broader standards that the Commission applies pursuant to §§ 309 and 310(d) of the Communications Act of 1934. *See, e.g., AT&T Inc. and Centennial Communications Corp.*, 24 FCC Rcd 13915, 13927-29 (2009).

Ms. Burchuk apparently invited representatives of the Commission to attend the meeting with Texas 10. Neil Dellar of the General Counsel's Transaction Team and Kathy Harris and Susan Singer of the Wireless Telecommunications Bureau were present at the May 3, 2010 meeting. When the brochure was handed out, Mr. Dellar, Ms. Harris and Ms. Singer each received an unredacted copy of Texas 10's PowerPoint presentation. The presentation that was intended for the Antitrust Division fell into the Commission's hands only because Ms. Burchuk invited the Commission to be represented at the meeting. Under such circumstances, the Commission should afford the confidential treatment to the presentation that it would have received if Mr. Dellar, Ms. Harris and Ms. Singer had not attended the meeting.

The brochure should be withheld from public inspection under FOIA Exemption 4, because it contains information that is "(1) commercial or financial, (2) obtained from a person, and (3) privileged or confidential." *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983). Information as to Texas 10's annual revenue (p. 2), business strategy (p. 5), competitive advantages (p. 6), markets and subscribers (p. 7), distribution outlets, cell sites, and employees (pp. 8, 15), marketing and sales strategies (pp. 11-12, 14), call center management (p. 17), network objectives and coverage (pp. 19-20), and plans for the integration of the divestiture assets (pp. 22-23) clearly constitute commercial or financial information that the Commission acquired from Texas 10.

The confidentiality of the financial or commercial information contained in the brochure turns on the fact that the information was voluntarily submitted to the Commission. *See Judicial Watch, Inc. v. United States Department of Justice*, 306 F.Supp.2d 58, 67 (D.C.D.C. 2004). Texas 10 was not compelled by the Antitrust Division to produce the brochure, and it did not have to give copies of the document to Mr. Dellar, Ms. Harris and Ms. Singer. Furthermore, "financial or commercial information provided to the Government on a voluntary basis is 'confidential' for the purpose of Exemption 4 if it is of a kind that would customarily not be released to the public by a person from whom it was obtained." *Critical Mass Energy Project v.*

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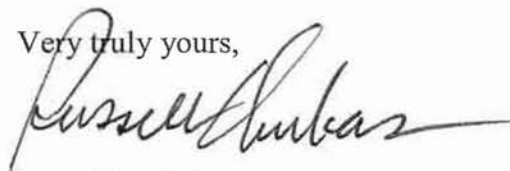
NRC, 975 F.2d 871, 879 (D.C. Cir. 1992). Texas 10 does not customarily make public detailed information about its annual revenue, business strategies, competitive advantages, markets, subscribers, distribution outlets, cell sites, employees, marketing and sales strategies, call center management, network objectives and coverage, or its plans for the integration of newly acquired operations. Consequently, such information is confidential for the purposes of Exemption 4.

The grant of this request to withhold portions of Texas 10's PowerPoint presentation also would be consistent with the Commission's ex parte rules. Whereas the Bureau made the consideration of the applications for Commission consent to the assignment of the licenses to Texas 10 a permit-but-disclose proceeding, no party has opposed the grant of the applications. Consequently, the PowerPoint presentation cannot be considered an ex parte presentation by a "party" to a permit-but-disclose proceeding. *See* 47 C.F.R. §§ 1.1202(d)(1) & 1.1208, Note 1. In any event, the presentation was made to the Antitrust Division and involved a telecommunications competition matter in a proceeding that has not been designated for hearing. Accordingly, it was an exempt ex parte presentation that is not subject to the disclosure requirements in permit-but-disclose proceedings. *See id.* § 1.1204(a)(6). Thus, Texas 10's PowerPoint presentation to the Antitrust Division can be withheld from public inspection under FOIA Exemption 4 and the Commission's ex parte rules.

Texas 10 seeks confidential treatment of information that concerns the provision of cellular service that is, and will be, subject to substantial competition. Moreover, the information is of the type that the Bureau presumes to be proprietary or confidential. *See, e.g., AT&T Inc. and Centennial Communications Corp.*, 24 FCC Rcd 2900, 2900 (WTB 2009). Such considerations should lead the Commission to treat the brochure as accepted on a confidential basis. *See* 47 C.F.R. § 0.457(d)(1).

Because the brochure was given voluntarily to Mr. Dellar, Ms. Harris and Ms. Singer, Texas 10 respectfully requests that the Commission return all copies of the brochure to me if this request for confidentiality is denied. *See id.* § 0.459(e). If any questions should arise with regard to this request, please direct them to me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Russell D. Lukas", with a long horizontal flourish extending to the right.

Russell D. Lukas

cc: Neil Dellar
Kathy Harris
Susan Singer